IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 30/1999

1. State of Goa through the
   Special Land Acquisition Officer
   (SIP) Gogol, Margao, Goa.

2. The Executive Engineer,
   Works Div. X, Irrigation Deptt.
   Panimol, Sanguem, Goa. ..... Appellants.

V/s.

Murlidhar Nadkarni,
r/o. Cotta Waddo, Sanguem, Goa. ..... Respondent.

Ms. W. Coutinho, Government Advocate for the appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Shreya Naik, Advocate for the respondent.

CORAM : R.M. LODHA, J.

DATE : 31ST AUGUST, 2005.

ORAL JUDGMENT

This first appeal under Section 54 of the Land Acquisition Act, 1894 is at the instance of the State of Goa, through the Special Land Acquisition Officer and the Executive Engineer, Works Division X, Irrigation Department, Panimol, Sanguem, Goa.

2. The Additional District Judge, South Goa, at Margao in Land Acquisition Case No.264/93 which was a reference under Section 28-A(3) of the Land Acquisition Act, 1894 redetermined the compensation awarded to the respondent by the Special Land Acquisition Officer.

3. The facts, in nutshell, are :

(i) On 2.12.1971, the Notification under Section 4 of the Land Acquisition Act was published in the Government Gazette proposing acquisition of the land admeasuring 9,70,525.00 sq. metres from Xelpem Village for Salaulim Irrigation Project dam and submergence area.

(ii) Plot No.107 of Xelpem Village belonging to the present respondent (hereinafter, referred to as the "expropriated owner") was part of the acquisition of the aforesaid land.

(iii) Acquisition of the aforesaid land was completed and the award under Section 11 of the Land Acquisition Act came to be passed by the Special Land Acquisition Officer in the year 1973, whereby he

awarded compensation of Re. 1/- per sq. metre for mixed garden area of 7800 sq. metres; Re. 00.75 per sq. metre for bharad area of 2400 sq. metres; Re.00.75 per sq. metre for cashew area of 1400 sq. metres; Rs.10/- for each jack fruit tree, mango tree and cashew tree; Rs.100/- each for each adult coconut tree and Rs.75/- each for other coconut trees. The compensation as awarded by the Land Acquisition Officer was received by the expropriated owner along with other statutory benefits under protest. But he did not make any application seeking reference under Section 18 of the Land Acquisition Act.

(iv) Under same acquisition proceedings, the land of one Narendra Nadkarni also came to be acquired. He sought a reference. That was registered as Land Acquisition Case No. 387 of 1981 and the District Judge, South Goa at Margao by Award delivered on 12.10.1990, enhanced the compensation payable to the said Narendra Nadkarni.

(v) The expropriated owner, on the basis of the Award

dated 12.10.1990 passed in the case of Narendra Nadkarni, applied for re-determination of compensation under section 28-A of the Land Acquisition Act.

(vi) In redetermination proceedings under section 28-A, the Special Land Acquisition Officer granted Re.1 per sq. metre for bharad land and Rs. 800/- per tree for the jack fruit trees. He declined to redetermine the compensation for mixed garden land, cashew land as also the compensation for mango and cashew trees.

(vii) Aggrieved by the Award passed by the Special Land Acquisition Officer under section 28-A (2), the expropriated owner sought a reference under section 28-A (3).

(viii) The reference court partly allowed the reference. The reference court redetermined the compensation for cashew land @ Re.1 per sq. metre; the market value of each mango tree was fixed at Rs. 500/- and the market value of each cashew tree was fixed at Rs. 150/-. In all, the reference court enhanced the compensation by Rs. 11,125/- and directed that

solatium at the rate of 30% shall be added thereto. The expropriated owner was held entitled to interest at the rate of 9% per annum from the date of taking over possession of the land upto the date of payment of such excess into court for the first year and at the rate of 15% per annum from the date of the expiry of the said period of one year until the payment.

3. As already noticed above, the Award passed by the reference Court, namely the District Judge, South Goa, Margao on 27.11.1998 is under challenge in this appeal.

4. Ms. Winnie Coutinho, the learned Government Advocate for the appellants submitted that in the reference under Section 28-A, it was not open to the reference Court to travel beyond the award passed in earlier proceedings. The reference Court could not grant any compensation in respect of which there was no finding in the earlier reference. According to the learned Government Advocate, the reference Court in reference under Section 28-A (3) can, at the most, enhance the compensation upto an amount that was awarded in the earlier

reference. She invited my attention to the award passed in Narendra Nadkarni's case in Land Acquisition Case No. 387 of 1981 and submitted that the market value of the cashew land, mango trees and cashew trees was not in issue in the earlier reference and, therefore, the said award could not have been the basis for redetermination.

5. On the other hand, Mr. S. D. Lotlikar, the learned Senior Counsel for the expropriated owner supported the Judgment and Award of the reference Court and submitted that the District Judge has not transgressed his limits and has acted within the limits of Section 28-A.

6. I reflected over the submissions of the learned Government Advocate and the learned Senior Counsel appearing for the parties.

7. It is not in dispute and rather it is admitted case of the parties that the expropriated owner's land in the present case and the land of Narendra Nadkarni were acquired under the same Notification dated 2.12.1971. It is also the admitted

position that the compensation that was awarded by the Special Land Acquisition Officer for the acquisition of expropriated owner's land comprised of plot no. 107 and the trees existing thereon and no reference was sought by the expropriated owner under Section 18 of the Land Acquisition Act. It is also not in dispute that Narendra Nadkarni whose land was acquired under the same Notification was not satisfied with the compensation awarded to him by the Special Land Acquisition Officer and he sought a reference under Section 18 of the Land Acquisition Act and in the said reference, the District Judge, South Goa, Margao passed an Award on 12.10.1990. Based on the Award dated 12.10.1990 passed in the case of Narendra Nadkarni, the expropriated owner claimed redetermination of the amount of compensation. As a matter of fact, the Special Land Acquisition Officer, on the basis of the Award passed in Narendra Nadkarni's case enhanced the market value of bharad land to Re.1 per sq. metre and Rs. 100/- each for jackfruit tree. That the expropriated owner claimed redetermination on the basis of the amount of compensation in Narendra Nadkarni's case in Award dated 12.10.1990 is not in question. The question is whether the reference Court in this

case committed any illegality in redetermining the market value of the bharad land at the rate of Re.1 per sq. metre and fixing the market value of mango trees at the rate of Rs.500/- per mango tree and Rs. 150/- per cashew tree on the basis of the Award in Narendra Nadkarni's case ?

8. Section 28 A reads thus :

> " 28-A re-determination of the amount of compensation on the basis of award of the Court.- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make and award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the work under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

9. The primary object underlying the enactment of Section 28 – A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of the expropriated owner not being able to take advantage of the

right of reference to the Civil Court under Section 18 of the Act. Section 28-A provides an opportunity to the aggrieved party whose land is covered by the same notification to seek re-determination once any one of the expropriated owners has obtained order for payment of higher compensation from the reference Court under Section 18. The provision incorporated in Section 28-A is a beneficial legislation and that has to be kept in mind while dealing with the case of re-determination of the compensation thereunder. On analysis of Section 28-A(1), it would be seen that a person could apply for re-determination of the amount of compensation payable to him provided he satisfies the following conditions : (one) that with regard to the acquisition of the land under the same notification, an award has been made by the Court under Part III after the coming into force of Section 28-A; (two) that the Court in such award has awarded the amount of compensation in excess of the amount awarded by the Collector under Section 11; (three) that the person applying under Section 28-A is the person interested in as much as his land has been acquired under the same notification under Section 4(1) to which the award of the Court related; (four) that the person moving the application under

Section 28-A did not make an application to the Collector under Section 18; (five) that the application is within time and (six) that no application under Section 28-A for re-determination by the applicant has been made earlier.

10. Section 28-A, thus, provides a right to the expropriated owner to claim redetermination of the amount of compensation on the basis of the award of the Court. The award that has been passed by the Court in excess of the amount awarded by the Collector under Section 11 is the basis on which the interested person moves the application under Section 28-A and seeks re-determination. It is not necessary for claiming re-determination under Section 28-A that the land in case of a person claiming redetermination of compensation awarded under Section 11 is exactly identical to the land for which the award has been passed by the Court. A close similarity and proximity to the award passed by the Court is sufficient to entitle a person interested in the land covered by the same notification under Section 4(1) to which the said award relates to apply for redetermination. Section 28-A postulates redetermination of the amount of compensation on the basis of

the award of the Court made in favour of another. But, that does not mean that factually and actually the land must be exactly similar. A close similarity and proximity is enough for an application for re-determination under Section 28-A.

11. In the case of **Babu Ram and others v. State of U.P. and another,** (1995) 2 SCC 689, the Apex Court held that Section 28-A was a complete code in itself providing a substantive right to an interested owner to claim compensation on the basis of the award to his neighbour covered by the same notification under Section 4(1). Section 28-A lifts the rigour of the bar created by Section 18(1) and the second proviso to Section 31. The Supreme Court further observed that even payment of compensation under Section 23(1) is varied, based on same quality of the land capable to fetch same price or value of the land situated in close proximity and payment of market value is not uniform.

12. Keeping the aforesaid legal position in mind when the award in the case of Narendra Nadkarni is seen, it would appear that in that case for 'bharad land' the compensation

was fixed at the rate of Re. 1/- per sq. metre. The award of Re. 1/- per sq. metre for 'bharad land' in the present case, therefore, cannot be faulted. As regards the trees, in Narendra Nadkarni's case, the compensation for adult coconut trees was awarded @ Rs. 250/- for each such tree; for each non-yielding tree Rs.100/-; for jackfruit trees Rs.800/- each and for the remaining trees, Rs.1000/-. In Narendra Nadkarni's case, cashew trees and the mango trees were not there on the acquired land. If the compensation for the non-yielding tree could be fixed @ Rs.100/- each in Narendra Nadkarni's case, that would surely form basis for award of Rs.150/- per cashew tree. Similarly, in Narendra Nadkarni's case the compensation for the adult coconut tree was awarded Rs.250/- per such tree. On that basis the market value of the mango trees at the rate of Rs.500/- per such tree could be re-determined. If the land is similar like 'bharad land' in the case of Narendra Nadkarni and the present case, merely because the trees standing thereon are somewhat different, that would not mean that the land was dis-similar, incapable for redetermination under Section 28-A of the Land Acquisition Act.

13. The award passed by the reference Court does not suffer from any error of law. As a matter of fact, the amount involved in the appeal is too small and the appellants would have been well advised if the tax payers' money was not spent on avoidable litigation by way of cost and payment of fees to the Government Advocates.

14. The first appeal has no merit and is dismissed with no order as to costs.

R.M. LODHA, J.

ssm.